

The opinion in support of the decision being entered today
is not binding precedent of the Board.

Paper No. 169

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MICHEL H. KLEIN, HEATHER A. BOUX,
STEPHEN A. COCKLE, SHEENA M. LOOSMORE,
AND GAVIN R. ZEALY

Junior Party,
(Patent 5,244,657),

v.

WALTER N. BURNETTE, III

Senior Party
(Application 08/448,727).

MAILED

JUL 12 2004

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Patent Interference No. 104,147

JUDGMENT - NO INTERFERENCE-IN-FACT

WILLIAM F. SMITH, LORIN, and GARDNER-LANE, Administrative Patent Judges.

LORIN, Administrative Patent Judge.

The parties have filed a "Joint Motion 2 Pursuant To 37 CFR 1.633(b)" seeking "judgment that no interference-in-fact exists between the designated claims of the parties," Paper No. 165, p. 12. Consistent with the granting of this motion and finding that no interference-in-fact exists (see "Decision on Joint Motions 1 and 2," Paper No. 168), we now enter judgment in this interference pursuant to our authority under 37 CFR § 1.658(a).

Upon consideration of the record, it is

ORDERED that judgment is awarded in favor of both junior party Klein and senior party Burnette.

FURTHER ORDERED that Burnette, the senior party, is entitled to Claims 9, 11, 12, 15, 17-19, 21, 25 and 35 of his Application 08/448,727, filed May 24, 1995.

FURTHER ORDERED that Klein et al., the junior party, is entitled to Claims 1-4 of their U.S. Patent No. 5,244,657, granted September 14, 1993.

FURTHER ORDERED that if there is any settlement agreement which has not been filed, then attention is directed to 35 U.S.C. § 135 and 37 CFR § 1.661.

Burnette Application 08/448,727 will now be forwarded to the Examiner in charge for further prosecution not inconsistent with this decision. In that regard, we advise the Examiner to review the Decision on Motions, Paper No. 144, especially pages 21-31, on questions of patentability of Burnette's claims raised during the interference proceeding. Some of those questions remain unanswered as of the Decision on Motions. In particular, the Examiner should consider whether Burnette

claims 9, 11, 12, 15, 17-19, 21, 25 and 35 are patentable under 35 U.S.C. §§ 102(a), 102(b) and/or 103(a) over Klein's published European application, Publication 0 332 115, published June 28, 1989. See pages 26-28 of the Decision on Motions.



WILLIAM F. SMITH

Administrative Patent Judge

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HUBERT C. LORIN

Administrative Patent Judge

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SALLY GARDNER-LANE

Administrative Patent Judge

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